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# BEING LUCKY AND BEING DESERVING, AND DISTRIBUTION

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This paper examines the concepts of desert and luck, familiar in political theory but neglected by sociologists. I argue that the idea of desert is composed of both personal performance and the degree of responsibility a person has over that performance. Distribution ought to be in accordance with the indebtedness created by the person's performance. This can be compromised by luck; that is, personal desert is undermined where lack of performance scuttles the applicability of the contributory model. This paper examines recent work, focusing on establishing desert criteria for each person's ends and life-plans, and a formula for distribution according to personal welfare.

## INTRODUCTION

The idea of desert, I wish to argue, is composed of a person's performance that is valuable to others and the degree of responsibility he has over that performance. This is consistent with the classic contributory formulation of desert that finds perhaps its paradigmatic statement in Aristotle.<sup>1</sup> In Aristotle, however, desert is only part of a wider model of praise or blame bestowed on voluntary action.<sup>2</sup> Moreover, Aristotle's notion of desert is complicated because, as Frank has argued, the criteria for distribution 'vary with the ends-in-view of the particular goods being distributed'.<sup>3</sup> Requit should be proportional to the person's display of virtue or excellence (i.e. merit). Goods should be distributed in proportion to the indebtedness created by a person's exceptional and chosen contributions to society. The contributory model is vulnerable to disturbance by good or ill luck, however, because the valued outcomes that a performer achieves (what he actually manages to do or display) depend at least to some extent on good or ill luck. That is to say, a person's desert is undermined where instances of sheer luck conspire to bring about something that happens to be valued by others. The relationship between control and performance is therefore influenced by two general forms of chance. Firstly, the performance itself may be aided by natural and social advantage, and subsequent episodes of good fortune. Secondly, that good fortune must coincide with what is valued by the world. Hence, upon reflection we may find that the quality of a person's will displayed towards us is diminished and even negated by the fact that it is consequent upon random events beyond the agent's control. If good and ill luck dominate our ability to realize valuable outcomes, however, the possibility of control and therefore deservingness appears to be undermined; we may begin to question whether it constitutes a legitimate basis for defining the conditions of entitlements.

## 1. THE PROBLEM OF LUCK

The control element embodied in our interpersonal responses to one another's performances threatens to undermine the possibility of desert. The problem of luck stems from the pre-reflective intuition that control is a condition of moral worth. As Thomas Nagel puts it:

Without being able to explain exactly why, we feel that the appropriateness of moral assessment is easily undermined by the discovery that the act or attribute, no matter how good or bad, is not under the person's control. [But] If the condition of control is consistently applied, it threatens to undermine most of the moral assessments we find it natural to make. The things for which people are morally judged are determined in more ways than we at first realize by what is beyond their control. And when the seemingly natural requirement of fault or responsibility is applied it leaves few pre-reflective moral judgments intact. (Nagel, 1982:175–176)

For example, we judge a drunk driver who kills a pedestrian to be guilty of manslaughter; yet because he was mentally incapacitated, the intuition of control suggests he is not guilty at all. This shows that our use of moral judgements is paradoxical in that the condition of control rules out judgments to which we hold firm.

Judith Andre, in response to the apparent paradoxical nature of our moral practices, makes the useful suggestion that our moral judgments are characterized by an Aristotelian and a Kantian viewpoint. (Andre, 1983) In the first instance we have an aspiration to complete self-sufficiency. Although this point of view was held by some of the ancient Greeks, notably Plato, it is through Kant that we have its modern expression. Kant sought to push the intuition of control to its limit. All external and internal contingencies are banished from the self, until we arrive at the only thing that is unconditional and thereby possessed by all: a good will that is good in itself. According to this scheme there is no room for luck when it comes to desert because morality cannot be associated with contingency.

Desert therefore rests on the agent's pure intentions rather than on the possibly lucky outcomes of their actions. We have here an outlook that attempts to resolve the tension between luck and desert by removing luck entirely from the equation. From an Aristotelian point of view, however, we see ourselves as inevitably subject to whims of fate; we are therefore more inclined to attach deservingness to outcomes achieved, at least in part, through luck. Further, we do not concentrate solely on the *intention* of the agent: the *effect* of an agent's action on the world, even if fortuitous, is not deemed irrelevant to desert-claims. This outlook recognizes the tragic inevitability of good and ill fortune - tragic in that although we may pursue self-sufficiency (we may indeed believe we have attained it), we cannot finally avoid chance. The self perceives itself as part of and partly defined by 'the course of events'. Given that we employ both introspective and outward-looking perspectives, it is not surprising that our use of desert is confused.<sup>4</sup>

The problem for desert, therefore, is that random events beyond the agent's control diminish if not negate his responsibility for a valued performance. Because of this it is not clear what amount of control is sufficient for us to say that a person is responsible or can legitimately take credit for a valued outcome. Whether and to what extent an agent is responsible for a valued outcome therefore hinges on how the idea of control is fleshed-out. Desert *per se* does not provide a criterion to tell us what *specific* description of control is required to countenance responsibility. Consequently, accounts of responsibility range from high-voluntariness accounts (only efforts, rather than outcomes, are not vulnerable

to good or ill luck) to low-voluntariness accounts (the minimum condition of control is that an agent could have chosen to do otherwise). This conflict of account, I suggest, reflects at the theoretical level the tension between the Kantian and Aristotelian perspectives.

Leaving aside the problem of the appropriate amount of responsibility, I want to turn to the more pressing, albeit related, problem of whether luck undermines the tenability of desert altogether; for it appears that if we take the high-voluntariness account to its limit it 'threatens to shrink desert to the point of vanishing.' (Miller, 1996:283) If from the Kantian perspective we seek to factor out all contingencies (events and circumstances beyond the agent's control), desert loses all meaning; the only residue we are left with is something like the noumenal 'good will'.

## 2. INTENTION AND OUTCOME

Desert is based on the relationship between the intention behind an agent's actions and its valuable consequences for others. As J. R. Lucas succinctly puts it, 'Actions are two-faced. They are done by agents, intentionally and therefore expressing what the agent has in mind. But they are also causes of effects in the public external world of events, and have consequences irrespective of whether they were intended or not. Actions typically both manifest reasons and bring about results.' (Lucas, 1993:33) It is crucial to deservingness that valuable consequences be both intended and not arrived at accidentally.

In Jerzy Kosinski's novel *Being There* (Kosinski, 1973) we are introduced to the character of Chance, a simpleton who has since childhood experienced nothing but the world of his garden and television. Upon venturing into the outside world, by acting out roles he has learnt through television and proffering simple gardening tips which are misinterpreted as metaphors for proper business and government, Chance avoids being identified as the simpleton he really is. Simply in virtue of 'being there,' Chance inadvertently rises to become an informal advisor to the president. Kosinski's satire highlights the role luck plays in our daily lives. The notion of 'being there' neatly encapsulates what we mean in general by luck. Fortune is defined as being at the right place at the right time (or the wrong place at the wrong time). This leads us to the corollary that if fate had dictated that I be there (that is, if circumstances had been different) then I would have been lucky as well.

Nevertheless, given that the agent *could* choose to be there, this notion does not fully explain luck. The minimum condition of control, and therefore desert, is intention; that is to say, the agent must at least intend to arrive at a particular outcome. While intention is necessary to the definition of self-control, however, it is not sufficient. A lottery player, for example, may *intend* to win first prize, but he can *only* attain that end through luck. (Although he may be said to exhibit a minimal element of control by buying the ticket, or by increasing his chances by buying many tickets). There must therefore also be the attempt or effort by the agent to *realize* that outcome through choices and actions. The attempts may be thwarted for reasons beyond the agent's control, but we must at least be able to recognize efforts to realize a valued outcome. If a valued outcome is unintended and inadvertently arrived at, there are no grounds for desert (e.g. accidentally accosting criminal on the run). Similarly if the outcome was intended but arrived at through good fortune rather than design, there is also no warrant for desert (e.g. a novice golfer might by sheer luck hit a hole-in-one). The converse also appears to be true: an experienced golfer

may fail to win the tournament because a gust of wind blew his last winning putt off target. Despite the actual outcome, we could say nevertheless that the golfer *deserved* to win the tournament (although he does not have an entitlement-claim for victory).

Control requires not only that the performance be intentional, but also be based on an appropriate degree of rational deliberation. In some circumstances we can control fortune by limiting the role chance plays: we can behave rationally both with respect to likely future outcomes, and by increasing or reducing (through due care towards others) the chances of a particular outcome. A drunk driver is guilty of manslaughter, at least to the extent that she was aware before or while she was driving that her action might result in an accident. Similarly, an unemployed person could increase her chances of employment by applying for more jobs; at least where such possibilities exist an agent cannot claim with quite the same force that she was simply unlucky. In the case of harm the person may also be absolved of culpability, if the harm was foreseeable, *but* unpreventable. In the context of benefits, the corollary is where the person can foresee ways of maximizing her chances, but is prevented from doing so (e.g. involuntary unemployment due to, say, racial or gender prejudice). Only in cases where the future proves to be unforeseeable or unpreventable can we therefore say that the agent is subject to genuine good or ill fortune in the full sense. Foreseeability also places a constraint on what an agent can claim credit for (or be blamed for). Even if knock-on effects are foreseen as a probable future consequence, the level of control dissipates as the valued outcome becomes more distant from the original performance.

The general rule being applied here is: control requires that the agent could at least have chosen to act otherwise; that is, she could have acted to avoid the harm or to improve her well-being. From this we can make the crucial distinction between personal preferences that are cultivated and adaptable, and those that are compulsive and unchangeable. If a person is *responsible* for a preference that is expensive (the predilection for 'claret and plovers eggs') or unrealizable (either because the bearer lacks the requisite capacity, or because a society characterized by scarce resources is unwilling to provide it), they do not *deserve* compensation for its denial. Similarly, if they are able to *adapt* their preferences, then we need not compensate to the same extent (although some lesser claim to compensation remains, in virtue of the fact that the person's choice has been denied). Wanted and/or adaptive preferences place a lesser obligation on others to provide. If the preference is *compulsive* and unstoppable, however, there are grounds for compensation, for the agent himself is not at fault (e.g. a kleptomaniac). We may make the same distinction between wanted preferences that are *harmful* to the agent or others (e.g. playing chicken on the motorway) and unwanted preferences that are harmful (e.g. a kleptomaniac; a heroin addict). It is important to note that control over *preferences* (cultivation and adaptability) dictates both the grounds for compensation *and* the grounds for blame.

Consequences of performance are often seen as relevant in two further respects. Firstly, the outcome provides epistemic proof that it was intended, and not simply the result of fortuitous action. Further, it seems intuitively peculiar that a person should have a strong intention but not act on it, even though he is able (he is not coerced, impaired, ignorant and so on). Where there is no outcome, therefore, we are led to question whether there was any intention at all. Secondly, an outcome is important from the Aristotelian point of view in cases where the consequences of the agent's actions are seen as more relevant than the agent's intention. For example, a drunk driver who kills a pedestrian is deemed guilty of manslaughter even though, due to his impaired mental state, he did not intend to cause harm.

It is from this demand for epistemic proof and the prioritization of consequences that we have the basis of the paradox noted by Nagel: a control condition that focuses on intention and a value judgment more concerned with the performance's outcome. Moral luck arises because the consequence of a person's actions takes precedence over their control. Our moral practice thus rests on the paradox that 'we judge people for what they actually do or fail to do, not just for what they would have done if circumstance had been different'. (Nagel, 1982:182)<sup>5</sup>

### 3. FORMS OF LUCK

Now that we have in place an account of the form of agency required to sustain a desert claim, I want to outline the different forms of luck that, it might be argued, undermine this account. Following Dworkin and Cohen I shall refer to these as instances of *brute luck*: factors beyond the agent's control that aid or hinder the pursuit of personal well-being. These may be contrasted with cases of *option luck*, which are risks and gambles the agent *could* have chosen not to take (i.e. calculated gambles), and which are therefore not entirely beyond the agent's control. (Dworkin, 1981b:293) (Cohen, 1989:908) I shall turn to discuss option luck shortly (3.3).

#### 3.1 *Brute Luck*

Consider the following cases of unavoidable brute (good or ill) luck: <sup>6</sup>

- (a) Starting luck: natural and socio-economic advantages and disadvantages that people are endowed with at birth and which are therefore beyond the agent's control.
- (b) Constitutive luck: the preferences, tastes, inclinations, capacities etc. that one is born with. For example, if the agent's preferences, tastes etc. do not equate with what is valued by the world, or his preferences do not permit him to realize them etc., he is at a comparative disadvantage.
- (c) Sheer luck: individual episodes of good fortune. Namely, unintended valued (e.g. accidental arrest of a criminal), and intended outcomes that are fortuitously arrived at (e.g. the lottery winner, or the novice golfer's hole-in-one).
- (d) Circumstantial luck: being at the right place at the right time - the job seeker who happens to apply for a job at a firm that unexpectedly requires new staff. If she had enquired the previous day, however, she would have been unlucky. The agent is lucky to be given the opportunity to perform.
- (e) Consequential luck: luck in the way things turn out. Say the drunk driver who goes through a red light without incident.
- (f) Opportunity luck: in each of the above cases the lucky agent is provided in some sense or other with an opportunity she would not have had in the absence of that luck. That is to say, the agent is granted a greater range of options they are capable of pursuing; consequently they are better placed to realize their personal ends and life plans.

I do not mean to say that each instance of brute luck is completely independent of the others; it is clear not only that they conspire for and against one another (e.g. a person born rich who subsequently wins the lottery. Alternatively, a person born rich who loses all his savings in a stock market crash), but they often refer to a similar form of luck. Further, sheer luck and consequential luck might be said to overlap with option luck, given that they involve, in some minimal sense, a kind of calculated choice.

Brute luck I take to be two-sided insofar as there is, firstly, an event or circumstance beyond the agent's control which, secondly, happens to coincide (or not) with what is valued. From the point of view of desert, this value is determined by the appraisal of *others*. From the point of view of the agent, the value is her *personal* end and life-plan. Because of these distinct sources of value, an individual agent may be 'brute unlucky' on three levels:

- (1) She is pursuing personal ends beyond her control (i.e. not cultivated or adaptable) and which cannot feasibly be realized (e.g. expensive tastes).
- (2) The pursuit of her personal ends, whether chosen or not, is thwarted by episodes of brute bad luck.
- (3) Her personal ends do not coincide with what is valued by others; for example, a person may be fascinated and extremely proficient at working on steam engines, but this pursuit is of little use to others.<sup>7</sup>

Once we take into account each form of brute luck and how they may act in concert, we see that the control element in the expression of value is increasingly nullified. Desert based on personal contribution and effort appears to be negated once we have factored-out such instances of brute luck. As Nagel puts it, 'The area of genuine agency, and therefore of legitimate moral judgment, seems to shrink under scrutiny to an extensionless point. Everything seems to result from the combined influence of factors, antecedent and posterior to action, which is not within the agent's control'. (Nagel, 1982)

That conclusion only becomes coercive, however, if we take the Kantian line of thought to its limit. We may question whether we ought to sacrifice the basis of our interpersonal relations and our conception of personhood to the Kantian noumenal self. The question to be answered is: what episodes of lack of control should and should not be discounted from our account of responsibility? This conclusion is consistent with the idea that desert is an indeterminate concept that relies on an external account to flesh out the specific content of value *and* responsibility.

As Arthur Ripstein has noted, 'The real disagreement is political through and through, for it does not concern whether or not individual responsibility matters, but where to locate the standard of care that each of us owes to the others. This is a political question because the formal apparatus of responsibility cannot address it on its own'. (Ripstein, 1994:23) By 'political' Ripstein means the Rawlsian 'not-metaphysical': an interpretation of responsibility and desert that does not rest on controversial doctrines that cannot be given a public justification. (Rawls, 1993) After all, desert and responsibility are central to the 'public culture of contemporary liberal societies,' not only in terms of justice beliefs, but also in terms of our interpersonal relations. Furthermore, desert presupposes a particular view of the self that must be accommodated if a theory of justice is to be uncontroversial, and is therefore able to establish compliance and stability.

My view is that 'public political culture' is scrutinized by our higher-order concerns regarding the influence of luck on efforts and contributions. I contend that deserved compensation for socially valuable work satisfactorily reaches a balance between both 'mutually challenging' points of view. On this reading, the *desert-basis* of wages comprises a hybrid of (a) contribution and (b) personal ends voluntarily forgone (i.e. contributory sacrifice), whilst the *metric* of wage desert is the personal ends forgone. To see this it will be instructive to consider how other theorists have tried to resolve the subversiveness of luck on ordinary moral thought. To begin with, hard determinism may be put to one side because it is clearly a Controversial doctrine.<sup>8</sup> We may thus begin to sketch possible

answers by looking at effort-based theories of desert (i.e. high-voluntariness interpretations of responsibility).

### 3.2 *Deserving efforts*

One view argued by John Rawls is that valuable performances are contingent on natural and social advantages that people are born with; the lucky starters, for reasons beyond their control, are granted a step up in pursuit of their personal ends and life-plans. Because the head-start is undeserved, its influence on a person's valuable performance should be factored out.<sup>9</sup>

It seems to be one of the fixed points of Our Considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. (Rawls, 1971:104)

What we are left with after the influence of starting luck has been discounted from the performance is the performer's efforts. Rawls, however, states that even striving conscientiously cannot form the basis of distribution, because there is no practicable way of determining for each performer whether they are conscientiously striving. This suggests that Rawls is not, as some have argued (Nozick, 1974: 214), rejecting outright the idea that an agent may take credit for some aspect of his performance; rather he is noting the extreme difficulty of discerning luck-free efforts. 'The better endowed are more likely, other things being equal, to strive conscientiously, and there seems no way to discount for their greater good fortune. The idea of rewarding desert is impracticable'. (Rawls, 1971) It is for this reason that qualified desert (i.e. conscientious efforts) and therefore desert in total cannot form a basis for defining the legitimate institutions of justice - Rawls is not taking a hard determinist line. As G. A. Cohen puts it, Nozick misreads Rawls as saying, in the passage quoted, 'wholly determined' rather than 'influenced.' (Cohen, 1989:914) Hence Rawls actually means to say that 'effort is partly praiseworthy and partly not, but we cannot separate the parts, and the indicated policy consequence is to ignore effort as a claim to reward.' (Cohen, 1989: 915).<sup>10</sup> Cohen also notes that Rawls is inconsistent in his application of what is and what is not 'impracticable'. Rawls argues that although both efforts and expensive preference formation are only partially controlled, the latter is penalized in full (i.e. not compensated). (Cohen, 1989: 915–916).

Going back a step, however, we may question whether uneven starts should reduce a person's desert. Alan Zaitchik argues that Rawls's argument is flawed because it presupposes that all antecedent desert-bases must be deserved, given that starts are undeserved. This puts desert into a regress which, if we go 'all the way down' means that desert vanishes from view: in order to deserve Z, a person must deserve Z's ground Y, in order to deserve Y, he must deserve Y's ground X, and so on. (Zaitchik, 1977) Desert is nullified not because the starts are undeserved but because each desert-basis preceding the immediate performance must be deserved. Zaitchik is of the opinion that the Rawlsian argument is anathema to our pre-theoretical certainty that at least some people deserve something. (Zaitchik, 1977:373) However, because Rawls argues that starts are undeserved *qua* uncontrolled, this does not entail the general rule that *all* antecedent desert-bases of a performance must be controlled. It is not necessarily true of Rawls nor egalitarians in

general that they wish to reject all desert-claims, and consequently the general rule begs the question. (Sher, 1987:25) [Young, 1992 #174; 324]

What is being argued is that merely possessed or passive qualities (e.g. high IQ, beauty etc.), that are not the consequence of previous volition - not cultivated or developed by the person - are in themselves undeserved. This remains the case irrespective of whether we find it appropriate to admire or respect them; passive as opposed to active qualities may merit but not deserve admiration. In that case we clearly go beyond the low-voluntariness end of desert: the basis of requital is no longer something the claimant could have chosen not to do or, (in this case) chosen to have.

As we have seen, Rawls does not wish to take on a full-fledged determinist position. As Miller succinctly states it, 'People are willing to believe both that a man deserves rewards and other benefits for actions he performs, and that these actions can be explained in causal terms.' (Miller, 1976:102) And it seems that most egalitarians also want to remain consistent with this view, but nevertheless are inclined, upon reflection, to permit a narrower range of deserts with regard to lack of control.

However, as Sher points out, Rawls' position overstates the case. It is unnecessary to argue that the starts themselves are undeserved, because what is really at issue is the fact that they are unevenly distributed at birth, rather than the fact that they are uncontrolled. Hence where advantages are *evenly* held, we need not factor them out of a desert-basis. (Sher, 1987:26-27) What we arrive at then is the idea that a person can claim credit for at least (a) the choice to deploy talents towards a chosen end and (b) the subsequent exertions required to realize that end.

In another attempt to resolve the problem of brute bad luck Ronald Dworkin argues that persons should deserve *qua* their ambitions and efforts, but not in view of greater talent. (Dworkin, 1981b: 311) However, like Rawls, he argues that it is impossible to differentiate between what efforts a person can and cannot take credit for. (Young, 1992: 324-325) The issue of determining responsibility is circumvented in the following way: persons begin with an equal allocation of tradable resources which in turn provide an equal opportunity to pursue one's *chosen* ends. To represent this, Dworkin proposes a hypothetical auction in which persons use their equal resources to bid for things possessing the objective properties required to help them pursue their ambitions. (Dworkin, 1981b:285-289) To get around the problem of unequal initial endowments, Dworkin proposes a hypothetical compensation scheme in which, prior to the allocation of resources, and without knowledge of their endowments, people take out insurance against the possibility of being unlucky in the natural lottery. [Dworkin, 1981 #296:292-304; 314-319] In effect, people are compensated for the comparatively lesser powers - material resources, and mental and physical capacities - they receive to pursue their tastes and preferences. From the point of view of equal opportunity through resources, whatever value or disvalue accrues from each person's subsequent pursuit of their personal ends is theirs. This is because the person *chooses* what premium they pay to the insurance pool and what they do with the equal initial allocation of resources - they make calculated risks and gambles based on the equal resources.

This Dworkonian solution to the problem of brute luck is, I contend, flawed for the following reasons. Firstly, despite the equal initial allocation of resources it underestimates the ability of ill luck in one's calculated gambles to disadvantage systematically some persons over the long run. Secondly, it ignores those who possess expensive tastes for reasons beyond their control - it fails to provide the resources sufficient to compensate for those costly preferences that are beyond the agent's control. Thirdly, it is by no means



clear how, beyond acting as a guiding principle, the hypothetical auction and insurance scheme can be implemented in reality. I shall consider the first of these points in the following section.

### 3.3 *Option luck: Cumulative advantage and gambler's ruin*

Some theorists mistakenly argued- for example (Dennett, 1984: 95–96) (Goodin, 1988:294 fn.2) - that starting differences will even out over the long run. In fact it is far more plausible to say that initial differences will be accentuated over time. (Waller, 1989:209–211) The better-endowed will cumulatively reap comparatively greater benefits because they are more able and better placed to make successful, calculated gambles. In general we may say that those who enjoy good fortune at some point in time (including initial endowments) increase their chances of subsequent success. Life gambles are not analogous with coin tossing, because the outcome of each decision is partly contingent on the previous outcome: the success or failure of the previous decision influences the chances of future success. For example, a person who makes a career choice based on existing consumer preferences, which then change, may be left with undervalued skills. This problem is compounded by the relative difficulty of changing one's skills. In contrast, and leaving aside for the moment uneven natural endowments, the socio-economically worst-off face a greater chance of ruin. As a result of this, and also because they will be more risk-averse as a consequence, their success rate will be comparatively lower.

As Alexander Coram has recently noted (Coram, 1997; Coram, 1998)<sup>11</sup>, the very idea that fortunes will even out as the number of gambles is increased is in itself misguided, for even if we leave aside the problem of uneven starts, successes do not necessarily balance out as the number of gambles is increased. The *proportion* of successes will even out, but not necessarily the *number* of successes. For example, it still might be the case that after a large number of gambles, the actual number of successes and failures between person A and person B are not the same. After 1000 gambles, suppose A's success rate was 0.509, and therefore she had 18 more successes than B. After 10,000 gambles A's success rate may have reduced (although not necessarily) to 0.505. A would have been successful 100 more times than B in spite of the lower success rate. Success has evened out as a proportion of the total, but not in terms of the actual or absolute outcomes. Person A is only fractionally more successful than B after 10, 000 gambles in terms of a proportion, and yet she has accrued a significantly greater number of successes.

David Miller accepts the problem of cumulative advantage when discussing market outcomes: 'capitalist markets amplify the role of luck by allowing participants, if they choose to carry forward winnings in the form of capital investment.' But he commits the law-of-large-numbers fallacy: 'if periods were numerous, and the gains and losses relatively small and randomly distributed, then each person's long run level of benefit might not deviate significantly from their deserts.' (Miller, 1989:171) As we have seen, however, actual outcomes can deviate from expected outcomes (desert), and in absolute terms this may be significant. Assume that there are no contingent influences (i.e. ability). If after 1000 performances the expected outcome (desert) is attained at a rate of 0.490, then the due desert is not received 10 times. After 10,000 performances the expected outcome is attained 0.495; then the due desert is not received 150 times. Moreover, even though these 150 non-receipts of deserts (expected outcomes) were each relatively minor (which in reality they well might not be) they would add up to a significant amount of non-receipts (and each would have a cumulative effect).

Once we combine the fact that gambles over a person's life may not even-out with the cumulative effect of luck noted previously, we can see how luck may systematically cut against the ideas of desert and responsibility (and also socio economic mobility). This means that unless we accept desert's inegalitarian implications, then some maneuvering is required to maintain it as a viable principle of justice. We can allay the problem of circumstantial luck if we employ a probabilistic account of responsibility, i.e. what people deserve are the expected outcomes of their intentions and actions, rather than the actual outcomes. But this does not resolve the issue of uneven starts. Should the expected outcomes be based on each person's initial advantage or disadvantage? For although circumstantial luck is removed by equating desert with expected outcomes, birth luck cannot be eliminated in this way. It would appear that even more drastic maneuvering will be required to rescue desert from the problem of uneven starts. This leads Coram to conclude that: 'If what people deserve is the expected outcome of an action, then the poor get less than they deserve with much higher probability than the rich get less than they deserve'. (Coram, 1997:77)

Dworkin argues that the outcomes of calculated gambles and risks (i.e. option luck) should be left to lie as they fall, because they are chosen based on an initially equal distribution of powers. That is to say, he evades the problem of brute luck by providing greater or lesser opportunities to realize one's personal ends (i.e. access to a greater variety of gambles and greater probability of successful gambles) by ensuring the equal power to pursue one's ends. But this neglects the fact that one unsuccessful gamble will affect one's subsequent choice of gambles and the probability of success. Further, as we have seen, this need not even out over one's life-span – a failure (no matter how small) at one point in a person's life precludes access to subsequent gambles that might very well have been successful. The outcome of each gamble cumulatively advantages or disadvantages each person over the future stream of gambles. For this reason I believe Dworkin drastically underestimates the factor that motivates his whole thesis: namely, the influence of events and circumstances beyond the agent's control. The idea of desert is therefore severely threatened, even given an initially equal distribution of powers.

#### 4. DESERVING COMPENSATION - A PRELIMINARY STATEMENT

Dworkin looks to get around the problem of discerning genuine deserts by setting up just institutions from which legitimate entitlements may follow. Because subsequent receipts are 'ambition-sensitive', Dworkin's thesis is more amenable to the idea of desert than Rawls's. But the institutional formulation of desert is undermined, I argue, because luck is far more pervasive than he contends. Moreover, the problems associated with establishing the ideal of an initial equality of opportunity that includes equality of internal resources (talents, capacities, abilities and so on), appears insurmountable; and, assuming such a starting point and that desert is therefore legitimate, how are we then to deal with those who are unwilling to contribute value to the social enterprise?<sup>12</sup> Finally, as others have argued, Dworkin is inconsistent with his recognition of luck because he does not take into account unwanted or exorbitant preferences that are beyond the bearer's control. (Cohen, 1989:921–924)

There is a tacit acknowledgement by philosophical liberals that a line must be drawn between what a person is and is not responsible for. Those who recognize the difficulty and the arbitrariness of such a task have tried to leave that decision to 'how things fall' after

just institutions and rules of justice have been constructed. I propose a different solution to the problem. Rather than taking a stand along the spectrum between high-voluntariness and low-voluntariness it is preferable to argue that desert should be sensitive to the personal ends denied in the course of contributing value, rather than making it sensitive to the *extent* of the contribution itself (i.e. the degree of controlled value expressed). Desert, therefore, does not rest on the *extent* of responsibility over the performance (as with contributory desert) but only on the fact that the persons were responsible for it - they need only meet the minimum voluntariness requirement of desert (i.e. they could have chosen not to suffer the harm). We can say therefore that the performer of a contributory sacrifice can take credit in full for the contribution and the denial, because it is the latter that forms the relevant metric of deserving treatment. There is no need to speak of degrees of responsibility. All that is required is the minimum voluntariness: that the agent could have done otherwise. We need only be concerned with degrees of denial resulting from the work, or put perversely, 'how much harm the agent can take credit for.' What matters are each person's ends and life-plans; distribution according to personal welfare (qualified to take into account expensive ends that the person has control over) is the best means of ensuring that people's ends are met.

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## Notes

- 1 Aristotle, *Nicomachean Ethics*. Oxford: OUP. Book 5 and NE 1131a 25ff; Aristotle (1981) *Politics*. Harmondsworth : Penguin 1246b 16–22.
- 2 Aristotle, *Nicomachean Ethics*. Oxford: OUP. Book 3 and NE 1110a 25; *Politics*. Harmondsworth : Penguin. Pol. 1280a 14, 17.
- 3 Frank, J. (1998) ‘Democracy and Distribution: Aristotle on Just Desert.’ *Political Theory*, Vol. 26, 6, p. 788; NE 1278a 20ff; NE 1282b 20ff.
- 4 But this is by no means exclusively a modern predicament, for as Martha Nussbaum explains, the tension between self-sufficiency and contingency concerned Greek philosophical discourse as much as it does present day discourse: ‘... on the other side of this pursuit of self-sufficiency, complicating and constraining the effort to banish contingency from human life, was always a vivid sense of the special beauty of the contingent and the mutable, that love for the riskiness and openness of empirical humanity which finds its expression in recurrent stories about gods who fall in love with mortals.’ (Nussbaum 1986:3).
- 5 Norvin Richards contends that there is no inconsistency in concentrating on the actual performed outcome, for this is a reflection of our ‘epistemic shortcomings, and the agent’s good or bad fortune in those.’ (Richards 1986:199).
- 6 I base these distinctions on (Nagel 1982, Cohen 1989).
- 7 Wage desert must be based upon the denial of personal ends, rather than the contribution of value to the well-being of others. This is because the steam engine enthusiast, in order to pursue his preferred ends, must take on tasks that are valuable to others, but not to himself (i.e. work); the resources reaped from working (i.e. wages) provide the means necessary to pursue his preferred ends. In effect, the wage compensates the steam engine enthusiast for the denial of his personal ends by providing the means to pursue them. Wage resources are converted into preferred ends. Although the extrinsic benefit of work (i.e. wages, self-esteem, self-realization, status etc.) may balance out the loss of the personal end (equal but different satisfaction through alternative ends), it is the pursuit of the personal ends per se which is fundamental to the proper compensation of denial (resources necessary to realize the agent’s chosen ends). It is only where the worker consents to the former or ends-displacing variety of compensation that it is morally permissible from the point of view of agent autonomy. Hence, the mismatch between what is valued by the person and what others value is overcome by deserved compensation.
- 8 Miller makes this point with regard to Rawls’s project. (Miller 1996:281) But, as we shall see, the Rawls of *Theories of Justice* maintains that not all efforts are uncontrolled.
- 9 The claim that endowments should be discounted from desert is also argued by (Rachels 1978) [Sadurski, 1985 # 121: 116; 122–134, cf. Sadurski 1990, Campbell 1988: chapter 6].
- 10 See also (Young 1992: 324–325).
- 11 See also (Tedin 1998).
- 12 On the question of exploitation by the beneficiaries of an egalitarian redistribution, see the debate between Stuart White and Philippe Van Parijs (White 1997, Van Parijs 1997). See also (Arneson 1997).